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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/822,160 | 03/30/2001 | Matthew Bondy | 33477US1 | 6295 |
| 116 | 7590 | 03/18/2005 | EXAMINER | |
| PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108 | | | GART, MATTHEW S | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3625 | |

DATE MAILED: 03/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/822,160

Applicant(s)

BONDY, MATTHEW

Examiner

Matthew s Gart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,7-10,14,15,25,28,29,31,33,34 and 36-43 is/are pending in the application.
- 4a) Of the above claim(s) 28,29,31,33,34,36-39 and 43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,7-10,14,15,25 and 40-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/22/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/22/2004 has been entered.

Prosecution Summary

Claims 2, 5-6, 11-13, 16-24, 26-27, 30, 32 and 35 have been cancelled.

Claims 28-29, 31, 33-34, 36-39 and 43 have been withdrawn.

Claims 40-43 have been added

Claims 1, 3-4, 7-10, 14-15, 25, 28-29, 31, 33-34 and 36-43 are currently pending in the instant application.

Claims 1, 3-4, 7-10, 14-15, 25 and 40-42 are rejected as set forth below.

Examiner Comments

Claim 34 is shown to be dependent on claim 33, claim 33 was previously withdrawn, and therefore claim 34 is also withdrawn.

Claim 36 is shown to be dependent on claim 29, claim 29 was previously withdrawn, and therefore claim 36 is also withdrawn.

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Claim 37 is shown to be dependent on claim 31, claim 31 was previously withdrawn, and therefore claim 37 is also withdrawn.

Claim 38 is shown to be dependent on claim 36, claim 36 is now withdrawn, and therefore claim 38 is also withdrawn.

Claim 39 is shown to be dependent on claim 36, claim 36 is now withdrawn, and therefore claim 39 is also withdrawn.

Claim 43 is shown to be dependent on claim 37, claim 37 is now withdrawn, and therefore claim 43 is also withdrawn.

Drawings

The drawings were received on 12/22/2004. The Examiner accepts these drawings.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 7-10, 14-15, 25 and 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cronin Patent Application Publication US 2001/0032145.

Referring to claim 1. Cronin discloses a method of promoting and selling items, the method comprising the steps of:

- Receiving instruction for generating an independent custom web site from a group and assembling the web site based upon the instructions (Cronin: claim 1);
- Providing an e-tailing system for displaying information relating to items available for purchase, and for receiving and processing orders to purchase such items (Cronin: Fig. 3, "325");
- Embedding a hyperlink to the e-tailing system in said custom web site (Cronin: Fig. 3, "325");
- At the e-tailing system, receiving a plurality of orders to purchase items, the plurality of orders being initiated by a plurality of purchasers associated with said custom Web site (Cronin: paragraph 0032); and
- Processing the plurality of orders at the e-tailing system (Cronin: paragraph 0032).

Cronin does not expressly disclose receiving instructions for generating an independent custom web site from an affinity group.

The Examiner notes, data identifying the type of group (i.e. Affinity) is only found in the nonfunctional data stored via the method. Data identifying a group is not functionally related to the substrate of the method. Thus, this descriptive material will not distinguish the claimed invention from the prior art in term of patentability, see *In re Gulack*, 703 F. 2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to identify any of a plurality of groups, because such data does not functionally relate to the method steps and merely labeling the data different from that in the prior art would have been obvious. See *Gulack* cited above.

Referring to claim 7. Cronin further discloses a method comprising a step of preparing and maintaining a plurality of web site frameworks, each of which serves as a basic architecture in creating said custom web sites (Cronin: Paragraph 0034).

Referring to claim 8. Cronin further discloses a method wherein said frameworks are designed to include said hyperlink from said custom web sites to an e-tailing system (Cronin: Fig. 3).

Referring to claim 9. Cronin further discloses a method wherein said web site frameworks are configured to guide and help groups to create said custom web site. (Cronin: Paragraph 0034).

Referring to claim 10. Cronin further discloses a method wherein said hyperlink is embedded in said custom web site as an electronic store, wherein said electronic store is a customized electronic store for said custom web site (Cronin: Fig. 3).

Referring to claim 14. Cronin further discloses a method comprising a step of posting on said custom web site an advertisement and information relating to said e-tailer (Cronin: Fig. 3, "330")

Referring to claim 15. Cronin further discloses a method comprising a step of enrolling said group as a membership or partnership (Cronin: Paragraph 0016).

Referring to claim 25. Cronin further discloses a method comprising the steps of offering for sale in said customized electronic store, the products and services of a group in addition to the products and services of the e-tailer (Cronin: Paragraph 0034, "In one sense the web site is a boilerplate for information, where certain information is common to all distributors, and other information is pulled from the database security table 200 for each individual distributor.").

Referring to claim 40. Cronin discloses a method wherein said independent custom web site contains said hyperlink to the e-tailing system, but is otherwise not limited in content, layout, color, or style (Cronin: Fig. 3).

Referring to claim 41. Cronin discloses a method wherein said independent custom web site utilizes industry-standard web technologies and can therefore be hosted on the vast majority of Internet web servers (Cronin: paragraph 0039).

Referring to claim 42. Cronin discloses a method wherein said customized electronic store includes at least:

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- A custom layout and style that is consistent with said custom web site (Cronin: paragraph 0041).

Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cronin Patent Application Publication US 2001/0032145 in view of Bezos U.S. Patent 6,029,141.

Referring to claim 3. Cronin discloses a method according to claim 1 as indicated supra. Cronin does not expressly disclose sending the member package to a location associated with the corresponding member of the group.

Bezoes discloses a method wherein the step of processing includes packaging items into a member package representing orders of one member of an affinity group and further includes at least the following:

- Sending the member package to a location associated with the corresponding member of the affinity group (Bezoes: column 6, lines 12-20 and column 16, lines 28-42).

At the time the invention was made it would have been obvious to modify the method of Cronin to have included the limitations as taught by Bezoes in order to efficient market and sell good (Bezoes: column 1, lines 15-45).

Referring to claim 4. Cronin in view of Bezoes discloses a method according to claim 3 as indicated supra. Bezoes further discloses a method wherein said group package is delivered in a predetermined interval or period (Bezoes: Figure 8, "This item usually ships within 24 hours.").

Response to Arguments

Applicant's arguments with respect the rejected claim have been considered but are moot in view of the new ground(s) of rejection.

The Examiner notes, claims 29-33 were withdrawn from consideration (Office Action 8/24/2004) because they are directed to an invention that is independent or distinct from the invention originally claimed in the instant invention.

The Applicant submits that claims 29-33 are based on the original claims and disclosure and earnestly requests that amended claims 28, 29, 31 and 33 be reinstated for consideration, as they describe the Internet providing system, which is an important aspect of the invention. This is not found persuasive because the search required for claims 28-33 are not required for claims 1, 3-4, 6-10, 14-15, 25 and 40-42.

The requirement is still deemed proper and is therefore made FINAL.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew s Gart whose telephone number is 703-305-5355. The examiner can normally be reached on 8:30AM to 5:00PM m-f.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MSG
Patent Examiner
March 9, 2005



Jeffrey A. Smith
Primary Examiner